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| 10/571,738 | 03/14/2006 | Yves Gagnet | MCA-705 US | 6947 |
| 25182 | 7590 | 09/15/2009 | | |
| MILLIPORE CORPORATION 290 CONCORD ROAD BILLERICA, MA 01821 | | | EXAMINER GOLIGHTLY, ERIC WAYNE | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1792 | |
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| | | | 09/15/2009 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/571,738 | GAINET ET AL. | |
| | Examiner | Art Unit | |
| | Eric Golightly | 1792 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 5, 15, 16, 18 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-14, 17 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>14 March 2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicants' election of claims 1-4, 6-14, 17 and 19 (Group I and claims asserted by applicants to belong to Species 1) in the reply filed on 6/18/2009 is acknowledged. Because applicants did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 5, 15, 16, 18 and 20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention or species, there being no allowable generic or linking claim.

Specification

2. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicants' use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.

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(2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.

(g) BRIEF SUMMARY OF THE INVENTION.

(h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).

(i) DETAILED DESCRIPTION OF THE INVENTION.

(j) CLAIM OR CLAIMS (commencing on a separate sheet).

(k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).

(l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Content of Specification

- (a) Title of the Invention: See 37 CFR 1.72(a) and MPEP § 606. The title of the invention should be placed at the top of the first page of the specification unless the title is provided in an application data sheet. The title of the invention should be brief but technically accurate and descriptive, preferably from two to seven words may not contain more than 500 characters.
- (b) Cross-References to Related Applications: See 37 CFR 1.78 and MPEP § 201.11.
- (c) Statement Regarding Federally Sponsored Research and Development: See MPEP § 310.
- (d) The Names Of The Parties To A Joint Research Agreement: See 37 CFR 1.71(g).
- (e) Incorporation-By-Reference Of Material Submitted On a Compact Disc: The specification is required to include an incorporation-by-reference of electronic documents that are to become part of the permanent United States Patent and Trademark Office records in the file of a patent application. See 37 CFR 1.52(e) and MPEP § 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text were permitted as electronic documents on compact discs beginning on September 8, 2000.
- (f) Background of the Invention: See MPEP § 608.01(c). The specification should set forth the Background of the Invention in two parts:

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- (1) Field of the Invention: A statement of the field of art to which the invention pertains. This statement may include a paraphrasing of the applicable U.S. patent classification definitions of the subject matter of the claimed invention. This item may also be titled "Technical Field."
 - (2) Description of the Related Art including information disclosed under 37 CFR 1.97 and 37 CFR 1.98: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which are solved by the applicant's invention. This item may also be titled "Background Art."
- (g) Brief Summary of the Invention: See MPEP § 608.01(d). A brief summary or general statement of the invention as set forth in 37 CFR 1.73. The summary is separate and distinct from the abstract and is directed toward the invention rather than the disclosure as a whole. The summary may point out the advantages of the invention or how it solves problems previously existent in the prior art (and preferably indicated in the Background of the Invention). In chemical cases it should point out in general terms the utility of the invention. If possible, the nature and gist of the invention or the inventive concept should be set forth. Objects of the invention should be treated briefly and only to the extent that they contribute to an understanding of the invention.
- (h) Brief Description of the Several Views of the Drawing(s): See MPEP § 608.01(f). A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.
- (i) Detailed Description of the Invention: See MPEP § 608.01(g). A description of the preferred embodiment(s) of the invention as required in 37 CFR 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. Where elements or groups of elements, compounds, and processes, which are conventional and generally widely known in the field of the invention described and their exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly complicated subject matter is involved or where the elements, compounds, or processes may not be commonly or widely known in the field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.
- (j) Claim or Claims: See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on separate sheet or electronic page (37 CFR

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1.52(b)(3)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps. See 37 CFR 1.75 and MPEP § 608.01(i)-(p).

- (k) Abstract of the Disclosure: See MPEP § 608.01(f). A brief narrative of the disclosure as a whole in a single paragraph of 150 words or less commencing on a separate sheet following the claims. In an international application which has entered the national stage (37 CFR 1.491(b)), the applicant need not submit an abstract commencing on a separate sheet if an abstract was published with the international application under PCT Article 21. The abstract that appears on the cover page of the pamphlet published by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) is the abstract that will be used by the USPTO. See MPEP § 1893.03(e).
- (l) Sequence Listing. See 37 CFR 1.821-1.825 and MPEP §§ 2421-2431. The requirement for a sequence listing applies to all sequences disclosed in a given application, whether the sequences are claimed or not. See MPEP § 2421.02.

3. The use of the trademarks KDF™ and DOW CHEMICAL™ has been noted in this application. They should be capitalized wherever they appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

4. The disclosure is objected to because of the following informality: the specification at page 7, lines 21-23, indicates that EP 818228 is to the applicants of the present application, but it actually appears to be to the assignee of the present application, i.e., Millipore Corporation, and with the inventors being Niermeyer, et al.

Appropriate correction is required.

Claim Objections

5. Claims 1, 3, 6, 7, 8, 10 and 19 are objected to because of the following informalities:

Regarding claim 1, the phrase "module the housing contains" in line 6 of claim 1 should be replaced with "module, the housing containing", or the like.

Regarding claims 3, 6, 7, 10-12 and 19, the word "or" in line 3 of each of claims 3 and 6 should be replaced with "and" for proper Markush group expression.

Alternatively, the phrase "selected from the group consisting of" in line 2 of claim 3 should be deleted and the phrase "selected from the group consisting of" in lines 2 and 3 of claim 6 should be replaced with "comprises" for proper conventional expression.

MPEP 2173.05(h). Similar corrections should be made for the phrase "selected from the group consisting of" in lines 3 and 4 of claim 7 and the word "or" in line 4 of claim 7, and made for the phrase "selected from the group consisting" in line 2 of claim 10 and the word "or" in line 3 of claim 10. Similar Markush or conventional expression correction should be made for claims 11, 12 and 19.

Further regarding claim 10, the space immediately before the ending period should be deleted.

Regarding claim 8, the word "comprising" in line 3 should be replaced with "consisting of" for proper Markush group expression. Alternatively, the phrase "is selected from the group comprising" in line 3 should be replaced with "comprises" and

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the word "and" in line 5 replaced with "or" for proper conventional expression. MPEP 2173.05(h).

Further regarding claim 8, the word "and" should be added immediately before the phrase "the pretreatment" in line 3.

Regarding claim 19, the word "and" should be added immediately before the phrase "a tangential" in line 3.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-4, 6-14, 17 and 19 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

8. Claims 1-4, 6-14, 17 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

Regarding claim 1, the phrase "in particular" in lines 1 and 2 renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d). It appears that the limitation is not intended to be part of the claimed invention, i.e., the module can be useful for purifying fluids other than water, and this meaning will be used for purposes of examination.

Further regarding claim 1, the phrase "means for removably connecting the purification module to the purification system" in line 4 renders the claim indefinite. Claim interpretation under 35 USC 112, sixth paragraph, is apparently invoked and the corresponding structure is described in the specification in broad generic terms and the specific details of which are incorporated by reference to another document EP 818228 (the specification at page 7, lines 20-23), as an exemplary embodiment. Thus, the claim description is reviewed in the specification, without relying on any material from the incorporated document, and one skilled in the art could not identify the corresponding structure for performing the recited function to satisfy the definiteness requirement of 35 U.S.C. 112, second paragraph. MPEP 2181(III)(B). Moreover, the incorporated embodiment is taught as a mere example, thus one skilled in the art would not be able to identify the boundaries of the claim.

Further regarding claim 1, the phrase "adapted to form part of a fluid purification system" (line 2) renders the claim indefinite because it is not clear whether or not the purification system is intended to be required structure. It appears that the intended meaning is that the purification system is not intended to be required structure, and this meaning will be used for purposes of examination.

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Further regarding claim 1, the phrase "to clean" in line 7 renders the phrase indefinite because it is not clear what this modifies, i.e., *what* is to clean? -- a module ... to clean? a cleaning agent ... to clean? fluid caused to circulate ... to clean?, etc.

Regarding claims 1, 7, 98 and 19, claim 1 recites the limitation "the fluid caused to circulate" in line 7, and claims 7, 8 and 19 recite the limitation "the purification processing means" in lines 2 and 3 of each of claims 7, 8 and 19. There is insufficient antecedent basis for these limitations in the claims.

Regarding claims 7, 8 and 19, the phrase "purification processing means" in lines 2 and 3 of each of claims 7, 8 and 19 renders the claims indefinite because it is unclear whether this is meant to be the same as the fluid purification means (as in line 3 of claim 1) or if it is something else. It appears that the latter may be the intended meaning, and this meaning will be used for purposes of examination.

Regarding claim 13, the phrase "means for identification" renders the claim indefinite since there does not appear to be the necessary description to support this means plus function language. MPEP 2181(II).

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-4, 7-11, 14, 17 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,780,197 to Schuman (hereinafter "Schuman").

It appears that applicants intend to invoke means plus function claim interpretation (35 USC 112, sixth paragraph) with the limitation “means for removably connecting” (claim 1, line 4), which is interpreted to any structure or material described in the specification and its equivalents which correspond to the claimed means plus function limitation, in accordance with 35 U.S.C. 112, sixth paragraph and MPEP 2181 through 2186. Here, the specification does not appear to explicitly disclose the means, but rather incorporates by reference EP 818228 (the specification at page 7, lines 20-23), which is disclosed as an *exemplary* structure. See the section " Claim Rejections - 35 USC § 112".

The recitation "fluid purification means" (claim 1, line 3) is not interpreted under 35 USC 112, sixth paragraph, because it is not recited as "means for ...". MPEP 2181(I). For the same reason, the phrases “fluid purification pretreatment means” in line 2 of each of claims 7 and 19, and “purification processing means” in lines 2 and 3 of claim 7, are not interpreted under 35 USC 112, sixth paragraph.

The recitation “means for identification” in claim 13 is interpreted to invoke 35 USC 112, sixth paragraph, but is indefinite for lack of description. See the section " Claim Rejections - 35 USC § 112".

Regarding claim 1, Schuman teaches a module for purifying a fluid (abstract), which is fully capable of being disposed of and fully capable of being adapted to form part of a fluid purification system, and comprising: a fluid purification means (Fig. 2, ref. 56 and col. 4, line 19), a housing (Fig. 2, ref. 24, including ref. 28 and 94 and col. 3, line 33, 34, and 44 and col. 5, line 48) in which the purification means are housed, and a

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means (Fig. 2, ref. 30, 32, 34 and 38 and col. 3, lines 45-50 and col. 6, lines 35-56) for removably connecting the purification module to a purification system such that it fluid communication may be established between the purification system and the purification module, the housing containing from the outset a cleaning agent (Fig. 2, ref. 104 and col. 5, line 61) disposed to be fully capable of coming in contact with a fluid caused to circulate inside the housing.

Regarding claim 2, the module as per the Schuman teaching is fully capable of not being demounted.

Regarding claim 3, Schuman discloses a module wherein the cleaning agent is disclosed between the purification means and a purified fluid outlet formed in the housing (Fig. 2, ref. 44 and col. 4, lines 30 and 31).

Regarding claim 4, Schuman discloses a module wherein the cleaning agent is housed in a space (Fig. 2, ref. 94 and col. 5, line 48) in the housing.

Regarding claim 7, Schuman discloses a module wherein the housing contains a fluid purification pretreatment means (Fig. 2, ref. 84 and col. 6, lines 44 and 45) upstream of a purification processing means (Fig. 2, especially ref. 72, 68, 78 and col. 5, lines 19-25), and the cleaning agent is disposed at a location between the purification pretreatment means and a purified fluid outlet formed in the housing (Fig. 2, ref. 44 and col. 4, lines 30 and 31).

Regarding claim 8, Schuman discloses a module wherein the housing contains a fluid purification pretreatment means (Fig. 2, ref. 84 and col. 6, lines 44 and 45) upstream of a purification processing means (Fig. 2, especially ref. 72, 68, 78 and col.

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5, lines 19-25), and the pretreatment means comprises a front filtration member (Fig. 2, ref. 84).

Regarding claim 9, Schuman discloses a module wherein the cleaning agent comprises a chemical compound having a bactericidal effect (col. 5, line 61).

Regarding claim 10, Schuman discloses a module wherein the cleaning agent is in a form of tablets (col. 5, line 61).

Regarding claim 11, Schuman discloses a module wherein the cleaning agent is a chlorinated product (col. 5, lines 61, 67 and 68).

Regarding claim 14, initially it is noted that the recited system requires no additional structure beyond what is taught in claim 1. Thus, Schuman discloses a system for purifying a fluid comprising the module of claim 1.

Regarding claim 17, Schuman discloses a module wherein the cleaning agent is housed in a recess (Fig. 2, area within ref. 62 and col. 4, line 26) in a raised portion of the housing.

Regarding claim 19, Schuman discloses a module wherein the housing contains a fluid purification pretreatment means (Fig. 2, ref. 84 and col. 6, lines 44 and 45) upstream of a purification processing means (Fig. 2, especially ref. 72, 68, 78 and col. 5, lines 19-25) and a tangential filtration purification processing means (Fig. 2, ref. 56 and col. 5, line 2), and the cleaning agent is disposed at a location between the tangential filtration purification processing means and a purified fluid outlet formed in the housing (Fig. 2, ref. 44 and col. 4, lines 30 and 31).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

14. Claims 6, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schuman (US 4,780,197).

Regarding claim 6, Schuman discloses a module wherein the housing contains a tangential filtration purification means (Fig. 2, ref. 56 and col. 5, line 2), but does not explicitly teach that the filtration means is selected from the group consisting of reverse osmosis, nanofiltration, ultrafiltration and microfiltration. However, microfiltration is well known in the art and a person of ordinary skill in the art at the time of the invention would have found it obvious to use a microfiltration type of filtration means in the module of the Schuman teaching in order to remove, e.g., pathogens and contaminants from about 0.1 to 10 micrometers, with a reasonable expectation of success. It is noted that reverse osmosis, nanofiltration and ultrafiltration are also known in the art.

Regarding claim 12, Schuman discloses a module wherein the cleaning agent comprises chlorine (col. 5, lines 61-68), but does not explicitly teach the agent comprises one the recited list of substances, which includes bleach. Bleach is known in the art and the skilled artisan would have found it obvious to use an agent comprising bleach in the module of the Schuman teaching to, e.g., kill bacteria, with a reasonable expectation of success.

Regarding claim 13, Schuman does not explicitly teach a means for identification of the module by the fluid purification system. Controllers are known in the art, and it would have been obvious to the skilled artisan to include a controller in the module of the Schuman teaching, wherein the fluid purification system would be fully capable of identifying the module via the controller, in order to enhance process control.

Double Patenting

15. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

16. Claim 1 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 3 of U.S. Patent No. 4,944,875 to Gagnet (hereinafter “‘875”), which teaches a device for producing pure water. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of ‘875 differ from those of claim 1 of the present invention in that the claims of ‘875 do not explicitly teach the cleaning agent. Cleaning agents are known in the art and the skilled artisan would find it obvious to include a cleaning agent in order to enhance the fluid purification with a reasonable expectation of success.

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17. Claim 1 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 9 of copending Application No. 11/656,862 to Gagnet (published as US 20070187309 and hereinafter "Pub. '7309"), which teaches a water purification system. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of Pub. '7309 differ from those of claim 1 of the present invention in that the claims of Pub. '7309 do not explicitly teach the cleaning agent. Cleaning agents are known in the art and the skilled artisan would find it obvious to include a cleaning agent in order to enhance the fluid purification with a reasonable expectation of success.

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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Conclusion

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Golightly whose telephone number is (571) 270-3715. The examiner can normally be reached on Monday to Thursday, 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Kornakov can be reached on (571) 272-1303. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

EWG

/Michael Kornakov/

Supervisory Patent Examiner, Art Unit 1792